

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

KEITH JUDD,

Plaintiff,

3:13-cv-379-TC

v.

BARACK OBAMA,

Defendant.

ORDER TO PROCEED IN FORMA
PAUPERIS AND ORDER TO DISMISS

AIKEN, District Judge.

Plaintiff filed a document that is construed as a complaint under 42 U.S.C. § 1983. Plaintiff did not pay the civil filing fee or file an application to proceed *in forma pauperis*. However, plaintiff is granted *in forma pauperis* status and may proceed without the prepayment of the filing fee. However, for the reasons set forth below, plaintiff's complaint is dismissed, without service of process, on the basis that it is frivolous. See 28 U.S.C. § 1915(d).

Plaintiff alleges that President Obama is a citizen of Kenya and therefore "not qualified" to be the President of the United

States. Plaintiff further alleges that "Barack Obama must be removed and replaced with Keith Judd, Democratic Candidate for President of the United States." Complaint (#1) p. 1.

A complaint filed *in forma pauperis* may be dismissed before service of process if it is deemed frivolous under 28 U.S.C. § 1915(d). Neitzke v. Williams, 490 U.S. 319, 324 (1989); Jackson v. State of Ariz., 885 F.2d 639, 640 (9th Cir. 1989). A complaint is frivolous "where it lacks an arguable basis in law or in fact." Nietzke, 490 U.S. at 325; Lopez v. Dept. of Health Services, 939 F.2d 881, 882 (9th Cir. 1991); Jackson, 885 F.2d at 640. The term "'frivolous' . . . embraces not only the inarguable legal conclusion, but also the fanciful factual allegation." Neitzke, 490 U.S. at 325 (footnote omitted); McKeever v. Block, 932 F.2d 795, 798 (9th Cir. 1991); Jackson, 885 F.2d at 640.

Accordingly, in reviewing a complaint for frivolity, a trial court may "pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless." Neitzke, 490 U.S. at 327. In so doing, the assessment of the factual allegations must be weighted in favor of the plaintiff. Denton v. Hernandez, 112 S.Ct. 1728, 1733 (1992).

"Baseless" claims subject to sua sponte dismissal include those "describing fantastic or delusional scenarios." Neitzke, 490 U.S. at 328; Denton, 112 S.Ct. at 1733; McKeever, 932 F.2d at 798. "[A] finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the

wholly incredible." Denton, 112 S.Ct. at 1733.

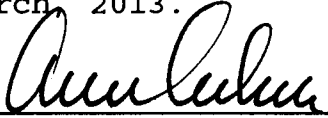
This court finds that the factual allegations in the instant case are irrational and wholly incredible. Even if plaintiff could establish a proper jurisdictional basis for his claims and standing to bring them to this court, I take judicial notice that the question of President Obama's citizenship and eligibility to serve as president has been litigated and resolved in other courts.

Regardless of how liberally the complaint is construed, the allegations fail to state a claim. Accordingly, the complaint is dismissed.

Based on the foregoing, IT IS ORDERED that plaintiff's complaint is DISMISSED. Because it is apparent that the deficiencies of the complaint cannot be cured by amendment, the dismissal is with prejudice.

IT IS SO ORDERED.

DATED this 12 day of March, 2013.



Ann Aiken
United States District Judge